

# WYATT, TARRANT & COMBS

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NASHVILLE, TENNESSEE 37219-1750

615 244-0020

FAX: 615 256-1726

CITIZENS PLAZA  
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502 589-5235

1700 LEXINGTON FINANCIAL CENTER  
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606 233-2012

TAYLOR SCOTT BUILDING  
FRANKFORT, KY 40601-1807  
502 223-2104

ELSBY BUILDING  
NEW ALBANY, IN 47150-3440  
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29 MUSIC SQUARE EAST  
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615 255-6161

313 E. MAIN STREET, SUITE 1  
HENDERSONVILLE, TN 37075-2546  
615 822-8822

6800 POPLAR AVENUE, SUITE 200  
MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

615 251-6713

April 26, 2000

K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37219

Via Hand Delivery

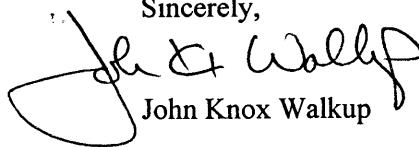
99-00909

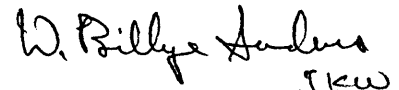
Re: Application of Memphis Networx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement between MLGW and A&L regarding Joint Ownership of Memphis Networx, LLC; Docket No. 99-00909 - Motion of the Applicant and Joint Petitioners to Exclude Affidavit of Rushton Sedberry or in the Alternative to Produce for Cross-Examination.

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) of the Motion of Memphis Networx, LLC, Memphis Light, Gas & Water Division and A&L Networks-Tennessee, LLC to Exclude Affidavit of Rushton Sedberry or in the Alternative to Produce for Cross-Examination.

Sincerely,

  
John Knox Walkup

  
D. Billye Sanders JKW

JKW/slh  
Enclosures

cc: Parties of Record  
J. Maxwell Williams, Esq.  
Ward Huddleston, Esq.

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4/26/00 11:58 AM

POSTED  
4-27-00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:

APPLICATION OF MEMPHIS NETWORKX, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES AND JOINT  
PETITION OF MEMPHIS LIGHT, GAS & WATER  
DIVISION, A DIVISION OF THE CITY OF MEMPHIS  
TENNESSEE ("MLGW") AND A&L NETWORKS-  
TENNESSEE, LLC ("A&L") FOR APPROVAL OF  
AGREEMENT BETWEEN MLGW AND A&L  
REGARDING JOINT OWNERSHIP OF MEMPHIS  
NETWORKX, LLC

DOCKET NO. 99-00909

**MOTION TO EXCLUDE AFFIDAVIT OF RUSHTON SEDBERRY OR  
IN THE ALTERNATIVE TO PRODUCE MR. SEDBERRY FOR  
CROSS-EXAMINATION**

Come now Memphis Networkx, LLC ("Applicant") and Memphis Light, Gas, and Water Division and A & L Networks-Tennessee, LLC (Joint Petitioners) to move that the attached affidavit of Rushton Sedberry sought to be introduced by or on behalf of an intervenor represented by Charles B. Welch Jr. (the specific intervenor is not identified in the affidavit or cover letter) be excluded from the evidentiary record in the above-styled proceeding or alternatively, to produce Mr. Sedberry for cross-examination and in support of this motion state as follows:

1. An order was entered by the Tennessee Regulatory Authority establishing the time during which pre-filed testimony could be filed by the parties. The last date for filing testimony has passed.

2. The Affidavit and correspondence attached to this motion were served on counsel for Applicant and Joint Petitioners on April 20, 2000.

3. Clearly, such an irresponsible and unwarranted attack on the integrity of representatives of Applicant and Joint Petitioners should be excluded for its contents alone.

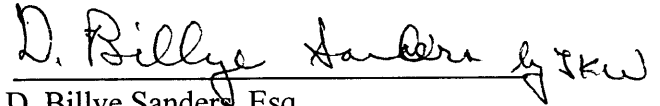
4. Applicant and Joint Petitioners are clearly prejudiced by the addition of another witness at this late stage of the proceeding and no intervener has sought leave of the Pre-Hearing Officer or the TRA for this departure from previous orders entered and the affidavit should be excluded.

For the foregoing reasons, Applicant and Joint Petitioners respectfully request that the motion to exclude affidavit be granted.

In the alternative and because of the presentation of the affidavit, the Applicant and Joint Petitioners request to cross-examine Mr. Sedberry orally. The consequence of this is to add an additional witness to this proceeding after the conclusion of the period for pre-filing testimony and after the TRA has set hearing dates based on the existing witness list. Additionally, allowance of this testimony and cross-examination will require rebuttal testimony by other witnesses, thus

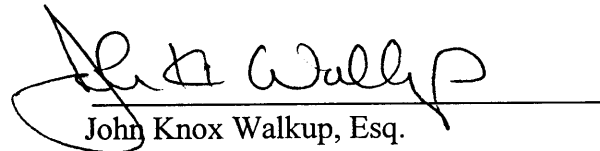
further adding to the length of this proceeding and detracting from the prompt and orderly conduct of the proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. Billye Sanders", followed by a horizontal line and the initials "JTW".

D. Billye Sanders, Esq.  
Waller Lansden Dortch & Davis  
A Professional Limited Liability Company  
Nashville City Center  
511 Union Street, Suite 2100  
Nashville, TN 37219-8966  
(615)244-6380

Attorney for MLGW and  
Memphis Networx, LLC

A handwritten signature in cursive script, appearing to read "John Knox Walkup", followed by a horizontal line.

John Knox Walkup, Esq.  
Wyatt Tarrant & Combs  
Nashville City Center  
511 Union Street, Suite 1500  
Nashville, TN 37219-1750  
(615)244-0020

Attorney for A & L and  
Memphis Networx, LLC

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MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

615 251-6713

April 26, 2000

Charles B. Welch  
Farris, Mathews, Branam, Bobango & Hellen, P.L.C.  
618 Church Street, Suite 300  
Nashville, Tennessee 37219

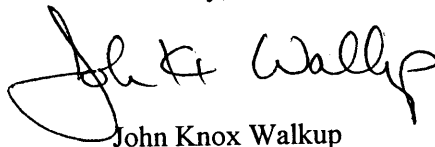
Via Hand Delivery

Re: Application of Memphis Network, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement between MLGW and A&L regarding Joint Ownership of Memphis Network, LLC; Docket No. 99-00909 - Motion of the Applicant and Joint Petitioners to Exclude Affidavit of Rushton Sedberry or in the Alternative to Produce for Cross-Examination - Notice Pursuant to Tennessee Code Annotated §4-5-313

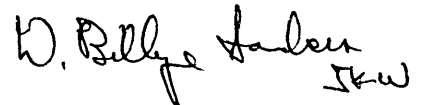
Dear Mr. Welch:

This constitutes our request to cross-examine Rushton M. Sedberry on behalf of the Applicant and Joint Petitioners at the hearing of the above-styled matter.

Sincerely,



John Knox Walkup



D. Billy Sanders

JKW/slh  
Enclosures

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4/26/00 11:34 AM

FARRIS, MATHEWS, BRANAN  
BOBANGO & HELLEN PLC

ATTORNEYS AT LAW

William W. Farris  
Harlan Mathews  
Homer Boyd Branam, III  
John A. Bobango <sup>1,2</sup>  
Tim Wade Hellen  
Edwin Dean White, III  
Charles B. Welch, Jr.  
John Michael Farris <sup>2</sup>  
D. Edward Harvey  
Eugene Stone Forrester, Jr.  
Dedrick Brittenum, Jr.  
Barry F. White  
Robert F. Miller  
Robert A. McLean <sup>5</sup>  
Anita I. Lotz  
Jerry W. Taylor  
Michael B. Chance  
Mark E. Beutelschies <sup>1</sup>

Steven C. Brammer  
Richard H. Booth  
Robert D. Hyde <sup>4</sup>  
Michael T. Evangelisti  
Kimberly Harris Jordan  
Garrett M. Estep <sup>3</sup>  
Montgomery B. Sernel  
Paul C. Peel  
Jon F. Minkoff

<sup>1</sup> also licensed in Arkansas

<sup>2</sup> also licensed in Florida

<sup>3</sup> also licensed in Kentucky

<sup>4</sup> also licensed in Mississippi

<sup>5</sup> Tennessee R31 Listed Mediator

618 Church Street, Suite 300  
Nashville, TN 37219

(615) 726-1200 telephone  
(615) 726-1776 facsimile

MEMPHIS DOWNTOWN  
One Commerce Square, Suite 2000  
Memphis, TN 38103

(901) 259-7100 telephone  
(901) 259-7150 facsimile

MEMPHIS EAST  
530 Oak Court Drive, Suite 345  
Memphis, TN 38117

(901) 762-0530 telephone  
(901) 683-2553 facsimile

Of Counsel  
Henry H. Hancock  
Marye Helen Owen

April 20, 2000

D. Billye Sanders, Esquire  
Waller Lansden et al.  
511 Union Street, Suite 2100  
P.O. Box 198966  
Nashville, TN 37219-8966

VIA HAND DELIVERY

John Knox Walkup, Esquire  
Wyatt, Tarrant & Combs  
511 Union Street, Suite 1500  
Nashville, TN 37219-1750

Re: Notice Pursuant to Tennessee Code Annotated § 4-5-313

Dear Billye and Knox:

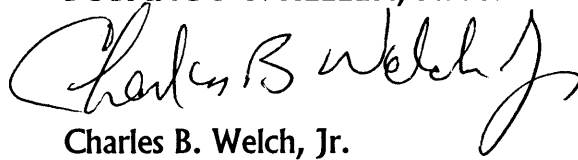
The accompanying affidavit of Rushton M. Sedberry will be introduced as evidence at the hearing in Application of Memphis Networx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement between MLGW and A&L Regarding Joint Ownership of Memphis Networx, LLC, Docket No. 99-00909. Rushton M. Sedberry will not be called to testify orally and you will not be entitled to question such affiant unless you notify Charles B. Welch, Jr., attorney for Intervenor, Time Warner Telecom of the Mid-South, L.P., Time Warner Communications of the Mid-South, and the Tennessee Cable Telecommunications Association, proponents of the affidavit, at 618 Church Street, Suite 300, Nashville, Tennessee 37219 that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to Charles B. Welch, Jr. on or before Thursday, April 27, 2000.

April 20, 2000  
Page 2

Thank you for your time and consideration.

Very truly yours,

FARRIS, MATHEWS, BRANAN,  
BOBANGO & HELLEN, P.L.C.

A handwritten signature in black ink, reading "Charles B. Welch, Jr." with a stylized flourish at the end.

Charles B. Welch, Jr.

CBW:ccw

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**APPLICATION OF MEMPHIS NETWORKX, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES AND JOINT  
PETITION OF MEMPHIS LIGHT GAS & WATER  
DIVISION, A DIVISION OF THE CITY OF  
MEMPHIS, TENNESSEE ("MLGW") AND A&L  
NETWORKS-TENNESSEE, LLC ("A&L") FOR  
APPROVAL OF AGREEMENT BETWEEN MLGW  
AND A&L REGARDING JOINT OWNERSHIP OF  
MEMPHIS NETWORKX, LLC.**

**DOCKET NO. 99-00909**

**AFFIDAVIT OF RUSHTON M. SEDBERRY**

After being duly sworn, the Affiant states as follows:


1. My name is Rushton M. Sedberry, and I am the General Manager of Hyperion Communications of Tennessee, L.P. ("Hyperion"), an authorized competing telecommunications services provider, pursuant to Order of the Tennessee Regulatory Authority effective September 15, 1999. The Company's principal place of business in Tennessee is 8195 Tournament Drive, Suite 300, Memphis, Tennessee 38215.
2. I have experience in the telecommunications industry in excess of twenty-five years, and my duties as General Manager is to supervise and direct the company's Memphis operations. I have been employed by the company for approximately eighteen (18) months.



3. Upon my request, our company representatives contacted Memphis Light Gas & Water ("MLG&W") in August, 1999 to initiate the negotiations and execution of a pole attachment agreement in connection with our business plans to construct fiber optic network facilities. This agreement was not finally executed and in place until the last week of March, 2000.
4. Despite my efforts and the efforts of other Company personnel to conclude this process within a reasonable time, MLG&W failed to respond in a good faith and a timely manner causing a serious, unnecessary delay in the company's construction of its network facilities.
5. In addition to Memphis Light Gas & Water's efforts to slow the contracting process, MLG&W demanded a pole attachment rate of seventeen dollars and twenty-eight cents (\$17.28) per pole plus the dedication of six dark fibers to its fiber network. Based upon my experience in the telecommunications industry, this non-negotiable pole attachment rate is excessive and unreasonable and represents a significant impediment to Hyperion's efforts to enter and compete in the Memphis telecommunications market. The rate imposed by MLG&W is in excess of one thousand percent (1,000%) of the federal formula for pole attachment rates.

6. Memphis Networkx has engaged in deceptive and possibly anticompetitive trade practices. Specifically, on or about September 30, 1999, Ed Horrell and Ward Huddleston, representatives of Memphis Networkx, met with me to discuss the possibility of Hyperion using Memphis Networkx facilities as a "carriers' carrier." Horrell and Huddleston made the express statement that Memphis Networkx would operate only as a carriers' carrier. In accordance with these express statements, I discussed business confidences with Horrell and Huddleston that I would not have had I known that Memphis Networkx would be engaged in more traditional CLEC services. Specifically, I discussed the ripeness of the Collerville market and Hyperion's plans to penetrate that market. Subsequently, I have learned that Memphis Networkx, through its agent, A&L Underground, has initiated construction in that area.

Further affiant sayeth not.

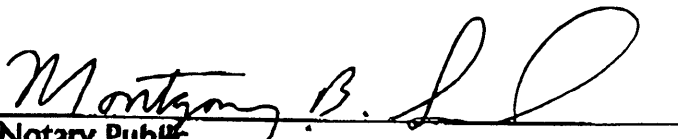
  
Rushton M. Sedberry

STATE OF TENNESSEE

COUNTY OF SHELBY

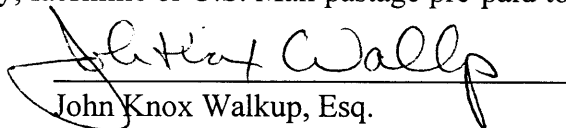
Sworn subscribed before me this the 20<sup>th</sup> day of April, 2000.



  
Notary Public

**CERTIFICATE OF SERVICE**

I, John Knox Walkup, hereby certify on this 26<sup>th</sup> day of April, 2000, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.

  
John Knox Walkup, Esq.

Henry Walker, Esq.  
Boulton Cummings Connors & Berry, PLC  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, TN 37219  
Attorney for NEXTLINK, Tennessee, Inc.

Guy Hicks, Esq.  
Patrick Turner, Esq.  
Bellsouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-330  
Attorneys for BellSouth  
Telecommunications, Inc.

Charles B. Welch, Jr., Esq.  
Farris Mathews Branan, Bobango &  
Hellen, P.L.C.  
618 Church Street  
Suite 300  
Nashville, TN 37219  
Attorney for Time Warner of the  
Mid-South L.P., Time Warner  
Communications of the Mid-South, L.P.,  
and the Tennessee Cable  
Telecommunications Association

Lee J. Bloomfield, Esq.  
Allen, Godwin, Morris, Laurenzi &  
Bloomfield, P.C.  
One Memphis Place  
200 Jefferson Avenue, Suite 1400  
Memphis, Tennessee 38103  
Attorney for the International  
Brotherhood of Electrical Workers  
Union, Local 1288

R. Dale Grimes, Esq.  
Bass, Berry & Sims  
2700 First American Center  
Nashville, TN 37238  
Attorney for Concord Telephone  
Exchange, Inc., Humphreys County  
Telephone Company, Tellico Telephone  
Company, Inc. and Tennessee Telephone  
Company